

**§ 398.7 Timing of flights.**

To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (*i.e.*, to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

**§ 398.8 Number of intermediate stops.**

(a) Except in Alaska, no more than one intermediate stop is permitted in providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify non-stop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

**§ 398.9 Load factor standards.**

The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:

(a) The place is served by the carrier as part of a linear route; or

(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

**§ 398.10 Overflights.**

The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:

(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department's essential air service determination for that place;

(b) Circumstances beyond the carrier's control prevent it from landing at the eligible place;

(c) The flight involved is not in a market where the Department has determined air service to be essential; or

(d) The eligible place is a place in Alaska for which the Department's essential air service determination permits the overflight.

## **PART 399—STATEMENTS OF GENERAL POLICY**

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#### Subpart K—Policies Relating to Certificate Duration

- 399.120 Duration of certificates in limited-entry markets.

AUTHORITY: 49 U.S.C. 41712

EFFECTIVE DATE NOTE: At 85 FR 78716, Dec. 7, 2020, the authority citation for part 399

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was revised, effective Jan. 6, 2021. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 49 U.S.C. 41712, 40113(a).

SOURCE: PS–21, 29 FR 1446, Jan. 29, 1964, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 399 appear at 84 FR 15947, Apr. 16, 2019.

### Subpart A—Applicability and Effects of Policy Statements

#### § 399.1 Applicability.

All statements of general policy adopted by the Department for the guidance of the public will be published in this part, except as provided in § 399.2.

#### § 399.2 Exclusions.

The following types of policies are generally not included in this part:

- (a) Policies relating solely to the internal management of the Department;
- (b) Policies requiring secrecy in the public interest or in the interest of national defense;
- (c) Policies that are repetitive of 49 U.S.C. 40101;
- (d) Policies that are fully expressed in a procedural or substantive rule of the Department, or in any opinion, decision, order, certificate, permit, exemption, or waiver of the Department;
- (e) Expressions of encouragement or admonition to industry to follow a certain course of action;
- (f) Positions on legislative items and on other matters that are outside the scope of the Department's current statutory powers and duties.

[PS–21, 29 FR 1446, Jan. 29, 1964, as amended by PS–63, 40 FR 6643, Feb. 13, 1975, Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

#### § 399.3 Statements in other Department documents.

No statement contained in any Department opinion, decision, order, certificate, permit, exemption, or waiver shall be considered a statement of policy within the meaning of this part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Department or relief sought, or statements of the Department's reasons for

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failure to issue a rule upon which rule-making proceedings have been commenced shall not be considered statements of policy, except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

### § 399.4 Nature and effect of policy statements.

Policy statements published in this part will be observed by the Department until rescinded, but any policy may be amended from time to time as experience or changing conditions may require. Changes in policy may be made with or without advance notice to the public and will become effective upon publication in the FEDERAL REGISTER unless otherwise provided. If it appears to the Department, in its consideration of any matter before it, that the application of a policy published in this part would run counter to an express provision of law or policy enunciated by Congress in 49 U.S.C., the published policy shall not be applicable to such matter.

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

### § 399.5 Arrangement of policy statements.

The statements of general policy relating to the various duties and functions of the Department are grouped according to subject matter in the following subparts; the titles of the subparts indicate the general subject matter included therein.

## Subpart B—Policies Relating to Operating Authority

### §§ 399.10–399.11 [Reserved]

### § 399.12 Negotiation by air carriers for landing rights in foreign countries.

(a) It is the policy of the Department (jointly with the Department of State) that, as a general rule, landing rights abroad for United States flag air carriers will be acquired through negotiation by the U.S. Government with foreign governments rather than by direct negotiation between an air carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the U.S. Government.

### §§ 399.13–399.17 [Reserved]

### § 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.

It is the policy of the Department to limit the duration of exemptions which authorize fixed-term route service to a maximum period of two years, and to entertain requests for renewal of such authority only when incorporated in a duly filed application for substantially equivalent certificate authority under section 401 of the Act. (See § 377.10(c) of this chapter (Special Regulations).)

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended at 65 FR 6457, Feb. 9, 2000]

### § 399.19 [Reserved]

### § 399.21 Charter exemptions (except military).

In deciding applications for exemptions from section 41102 of Title 49 of the United States Code by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

[PS-78, 43 FR 31886, July 24, 1978, as amended at 60 FR 43531, Aug. 22, 1995]

### Subpart C—Policies Relating to Rates and Tariffs

#### § 399.35 Special tariff permission.

The Secretary of Transportation may approve, under such terms as the Secretary may require, a carrier's application for Special Tariff Permission to file a tariff for foreign air transportation required under part 293 of this chapter on less than the notice required by 49 U.S.C. 41504(b).

[Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

#### § 399.36 Unreasonable discrimination.

(a) As used in this section:

(1) *Unreasonable discrimination* means unjust discrimination or unreasonable preference or prejudice; and

(2) *Rate* means rate, fare, or charge.

(b) Except in unusual circumstances or as provided in paragraph (c) of this section, the Department will find a rate for domestic air transportation to constitute unreasonable discrimination only if:

(1) There is a reasonable probability that the rate will result in significant long-run economic injury to passengers or shippers;

(2) The rate is in fact discriminatory according to a reasonable cost allocation or other rational basis;

(3) The rate does not provide transportation or other statutorily recognized benefits that justify the discrimination; and

(4) Actual and potential competitive forces cannot reliably be expected to eliminate the undesirable effects of the discrimination within a reasonable period.

(c) A rate that discriminates on the basis of the status of the traffic carried will not be presumed to be unreasonably discriminatory, unless the use of the status categories in question is contrary to established national anti-discrimination policy.

[PS–93, 45 FR 36062, May 29, 1980]

#### § 399.39 Equipment purchase deposits.

Equipment purchase deposits are advance payments made by air carriers to manufacturers for the purchase of equipment to be delivered in the future, or funds segregated by air carriers for this purpose. It is the policy of the Department not to recognize equipment purchase deposits in an air carrier's investment base for ratemaking purposes. When equipment is acquired by an air carrier and placed in air-transport service, the Department will recognize in the air carrier's investment base interest on purchase deposits on such equipment capitalized and amortized in accordance with the Uniform System of Accounts and Reports for Certificated Air Carriers (part 241 of this chapter).

[PS–32, 32 FR 5370, Mar. 30, 1967]

#### APPENDIX A TO SUBPART C OF PART 399—EXAMPLE OF SIFL ADJUSTMENT

[Methodology for determining change in operating expense per available seat-mile]  
[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total pas- senger/ cargo <sup>16</sup>
Total operating expense <sup>1</sup> (millions) .....	\$16,455	\$2,522	\$18,977	\$19,384
Less:				
All-cargo expenses <sup>2</sup> .....	269	.....	269	269
Belly offset <sup>3</sup> .....	952	153	1,105	1,153
Nonscheduled <sup>4</sup> .....	141	46	187	205
Transport related <sup>5</sup> .....	379	31	410	416
Plus: Capitalized lease adjustment <sup>10</sup> .....	119	2	121	121
Passenger operating expense .....	14,833	2,294	17,127	17,462
Passenger fuel cost <sup>11</sup> .....	.....	.....	4,103	N.A.
Scheduled service ASM's (mils.) .....	281,671	33,051	314,722	318,459
Passenger nonfuel operating expense per ASM (dollars) .....	.....	.....	.04138	N.A.
Passenger fuel expense per ASM (dollars) .....	.....	.....	.01304	N.A.
Total passenger expense per ASM (dollars) .....	.....	.....	.05442	.05483
Year ended September 1978				
Total operating expense <sup>1</sup> (millions) .....	14,081	2,033	16,114	16,448

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[Methodology for determining change in operating expense per available seat-mile]  
[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total pas- senger/ cargo <sup>16</sup>
Less:				
All-cargo expenses <sup>2</sup>	282		282	282
Belly offset <sup>3</sup>	869	152	1,021	1,065
Nonscheduled <sup>4</sup>	193	53	246	256
Transport related <sup>5</sup>	419	30	449	454
Plus: Capitalized lease adjustment <sup>10</sup>	78	1	79	79
Passenger operating expense	12,396	1,799	14,195	14,470
Passenger fuel cost <sup>11</sup>			3,129	N.A.
Scheduled service ASM's (mils.)	262,068	27,067	289,135	292,255
Passenger nonfuel operating expense per ASM (dollars)			.03827	N.A.
Passenger fuel expense per ASM (dollars)			.01082	N.A.
Total passenger expense per ASM (dollars)			.04909	.04951
Percent change in nonfuel operating expense per ASM (percent)			8.13	N.A.
Projected change in nonfuel expense from April 1, 1979 to April 1, 1980 <sup>6</sup>			8.13	N.A.
Estimated change in fuel cost, year ended September 1979 average to April 1, 1980 <sup>14</sup>			73.06	N.A.
Nonfuel operating expense per ASM at April 1, 1980 <sup>7</sup> (dollars)			.04474	N.A.
Fuel expense per ASM at April 1, 1980 <sup>7</sup> (dollars)			.02257	N.A.
Total expense per ASM at April 1, 1980 <sup>7</sup> (dollars)			.06731	<sup>15</sup> .06782

## Year ended March 1977

Total operating expense <sup>1</sup> (millions)	\$11,726	\$1,520	\$13,316	\$13,601
Less:				
All-cargo expense <sup>2</sup>	238		238	238
Belly offset <sup>3</sup>	729	96	825	865
Nonscheduled <sup>4</sup>	220	35	225	266
Transport related <sup>5</sup>	427	111	538	554
Passenger operating expense	10,112	1,348	11,460	11,678
Passenger fuel cost	2,190	230	2,420	N.A.
Scheduled service ASM's (mils.)	239,593	23,428	263,021	265,837
Operating expense per ASM (dollars)	.04221	.05754	.04357	.04393
Projected expense per ASM (dollars) as at July 1, 1977 <sup>13</sup>				.04593
Projected operating expense per ASM as at April 1, 1980 (page 1) (dollars)				.06782
Ceiling adjustment factor <sup>8</sup> (percent)				47.66

D.P.F.I. formula effective July 15, 1977<sup>12</sup>:

Terminal charge	\$16.16
Plus	.0884/mile (0-500 miles).
Plus	.0674/mile (501-1,500 miles).
Plus	.0648/mile (over 1,500 miles).

Ceiling formula through April 30, 1980<sup>9</sup>:

Terminal charge	\$23.86
Plus	.1305/mile (0-500 miles).
Plus	.0995/mile (501-1,500 miles).
Plus	.0957/mile (over 1,500 miles).

<sup>1</sup> Total operating expense for all operations and service (in millions).<sup>2</sup> Scheduled all-cargo operations expense.<sup>3</sup> Total scheduled-service cargo revenue, less scheduled all-cargo operations revenue, carried as a by-product in aircraft belly compartments. Includes freight, express, priority and non-priority U.S. mail, and excess baggage.<sup>4</sup> Total non-scheduled revenues times 0.95, assuming charter operations would only be conducted at a profit.<sup>5</sup> Total transport-related expense, less any excess of expense over total transport-related revenues.<sup>6</sup> We here project costs from April 1, 1979 (the midpoint of the data year ended September 1979) to April 1, 1980 the resultant increase factor effective through April 30, 1980.<sup>7</sup> Operating expense per ASM for year-ended September, 1979, times projected change.<sup>8</sup> Projected operating expense per ASM on April 1, 1980 divided by the operating expense as at July 1, 1977.<sup>9</sup> Adjustment results in a 2.5 percent increase in level over current January 1, 1980 factor.<sup>10</sup> Additional rental expense that would have been incurred had leases not been capitalized under FASB-13, less actual amortization of capitalized lease expense.<sup>11</sup> Total fuel cost, scheduled service, times complement of rate of All-Cargo expense to total Operating Expense.<sup>12</sup> Order 77-7-26.<sup>13</sup> Year ended March, 1977 cost per ASM, times cost escalation factor of 1.04543 (to July 5, 1977). See DPFI workpapers, Y.E. March, 1977.<sup>14</sup> Estimated average cost per gallon for the trunk plus local service carriers at April 1, 1980, divided by the average for the year ended September, 1979 (48.33c).<sup>15</sup> Change in Trunks plus Locals cost per ASM as at April 1, 1980, to year ended September, 1979 times total Psgr/Cargo cost for the year ended September, 1979.

<sup>16</sup> Includes Alaskan, Hawaiian and other regional carriers.

[PS–92, 45 FR 24119, Apr. 9, 1980, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

## Subpart D [Reserved]

### Subpart E—Policies Relating to Hearing Matters

#### § 399.60 Standards for determining priorities of hearing.

(a) *General.* This policy statement describes the general standards which will be used by the Department in determining the order in which it will designate for hearing those matters on its docket which are to be decided after notice and hearing. Among such matters are applications for certificates of public convenience and necessity or for foreign air carrier permits; complaint cases; and various rate-making proceedings.

(b) *Standards.* Matters will be assigned for hearing in accordance with the degree of relative priority which each matter is entitled to on the basis of the comparative public interest involved therein. Among other things, the Department will take into account:

(1) Statutory requirements for preference or statutory limitations on the time within which the Department shall act;

(2) The impact of delay on the public or particular persons;

(3) The need for promptly securing compliance with the provisions of the Act;

(4) The time for which the matter has already been pending and which would be required to dispose of it;

(5) Whether the application requests renewal of an existing temporary authorization; and

(6) In matters relating to operating authority:

(i) Whether a proposal might reduce subsidy or increase economy of operations;

(ii) Whether an application proposes new service;

(iii) The volume of traffic that might be affected by the grant or denial of the proposal;

(iv) The period that has elapsed since the Department considered the service

needs of the places or areas involved; and

(v) The relative availability of necessary staff members of the carriers, communities and the Department, in the light of other proceedings already in progress, to handle the processing of the case.

Interested persons may urge upon the Department such considerations as they believe should lead it to accord a particular application a priority different from that which the Department has given it.

[PS–21, 29 FR 1446, Jan. 29, 1964, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

#### § 399.61 Presentations of public and civic bodies in route proceedings.

For the purpose of implementing the Department's policy to provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and otherwise to expedite route proceedings, and in light of experience, the following guidelines are hereby established:

(a) Public and civic bodies which represent the same geographic area or community should consolidate their presentation of evidence, briefs or oral argument to the examiner and the Department;

(b) A public body or a civic organization, or several such bodies or organizations whose presentation of evidence is consolidated, should keep to a minimum the number of witnesses used to present the factual evidence in support of the community's position;

(c) Exhibits offered in evidence by a public body or civic organization should be limited to evidence of the economic characteristics of the community and area involved, data as to community of interest and traffic, evidence with respect to the sufficiency of existing service, and airport data, and should not include data relating to number of electricity, water and gas meters, telephones, schools, freight car

loadings, building permits, sewer connections, or volume of bank deposits in the community.

**§ 399.62 Target dates in hearing cases.**

(a) *Applicability.* This section applies to initial and recommended decisions of administrative law judges, final decisions, and decisions on petitions for review or reconsideration in cases in which the Department has ordered a trial-type hearing before an administrative law judge.

(b) *Issuance of target dates.* In cases to which this section applies, the Department or the administrative law judge, as the situation calls for, shall issue a notice of the target date for the completion of the initial or recommended decision, final decision, or decision on a petition for review or reconsideration. The Department or the administrative law judge shall endeavor to render the pending decision not later than the target date.

(c) *Time for promulgating target dates.*  
(1) In the case of initial, recommended, or final decisions, notice of target dates shall be issued, served, and filed within 20 days of the submission of closing briefs, or the conclusion of oral argument to the administrative law judge or the Department, as may be appropriate.

(2) In the case of petitions for review or for reconsideration, notices of target dates shall be issued, served, and filed within 20 days of the date for the filing of answers: *Provided*, That, in the case of petitions for reconsideration of Department decisions awarding new route authority, the Department shall, in lieu of issuing individual target dates, endeavor to render its decision no later than the day preceding the effective date of the new authority awarded.

[PS-71, 41 FR 41407, Sept. 22, 1976, as amended by PS-73, 42 FR 21611, Apr. 28, 1977]

**§ 399.63 Role of staff in route proceedings.**

(a) *General.* This policy statement establishes the standards applicable to staff participation in oral hearing cases involving award of route authority.

(b) *Standards.* The staff's role during such hearings, primarily because it acts in the broad public interest, and not for a particular private or local in-

terest, is to assure that essential evidence is introduced to resolve the public interest issues; that the evidence submitted by the parties is subject to adversary testing, and that decisional options are developed with the public interest in mind. In route cases designated by the Department that offer the opportunity for developing new policies to adapt to the administration of the Federal Aviation Act or that raise unusual evidentiary issues, a prehearing presentation by staff of decisional options will contribute to a better trial record, be consistent with traditional notions of fundamental fairness, better serve the Department's decisionmaking needs and ultimately serve the public interest. In any route case where the Department has not required the staff to participate by making a prehearing presentation, the staff shall present a prehearing presentation of decisional options if the administrative law judge finds that there exists unusual policy or evidentiary issues which clearly require such a presentation. We believe it is not desirable for the staff to advocate the adoption of a single decisional option at the outset of a case. Accordingly,

(1) In route cases designated by the Department that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(2) In any route case in which the administrative law judge finds that there exists unusual policy or evidentiary issues clearly requiring a prehearing presentation, the staff shall submit a prehearing statement of the decisional options available.

(3) To the extent possible, the Department, in its instituting orders, will identify or designate the cases which involve the development of new policies or unusual evidentiary issues that

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will require the type of staff participation described in § 399.63(b)(1).

[PS-76, 43 FR 19354, May 5, 1978]

### Subpart F—Policies Relating to Rulemaking Proceedings

#### § 399.70 Cross-references to the Office of the Secretary's Rulemaking Procedures.

The rules and policies relating to the disposition of rulemaking petitions by the Department of Transportation Office of the Secretary are located in its rulemaking procedures contained in 49 CFR part 5. The criteria for identifying significant rules and determining whether a regulatory analysis will be performed are set forth in the Department's Regulatory Policies and Procedures, 44 FR 11034, February 26, 1979, and Executive Order 12866.

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996]

#### § 399.73 Definition of small business for Regulatory Flexibility Act.

For the purposes of the Department's implementation of chapter 6 of title 5, United States Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft as defined in § 298.2 of this chapter (up to 60 seats/18,000 pound payload capacity).

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

#### § 399.75 Rulemakings relating to unfair and deceptive practices.

(a) *General.* When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall employ the definitions of "unfair" and "deceptive" set forth in § 399.79.

(b) *Procedural requirements.* When issuing a proposed regulation under paragraph (a) of this section that is defined as high impact or economically significant within the meaning of 49 CFR 5.17(a), the Department shall fol-

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low the procedural requirements set forth in 49 CFR 5.17. When issuing a proposed regulation under paragraph (a) of this section that is not defined as high impact or economically significant within the meaning of 49 CFR 5.17(a), unless the regulation is specifically required by statute, the Department shall adhere to the following procedural requirements:

(1) *Request for a hearing.* Following publication of a proposed regulation, and before the close of the comment period, any interested party may file in the rulemaking docket a petition, directed to the General Counsel, to hold a hearing on the proposed regulation.

(2) *Grant of petition for hearing.* Except as provided in paragraph (b)(3) of this section, the petition shall be granted if the petitioner makes a plausible prima facie showing that:

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;

(ii) The ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and

(iii) The resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule.

(3) *Denial of petition for hearing.* A petition meeting the requirements of paragraph (b)(2) of this section may be denied if the General Counsel determines that:

(i) The requested hearing would not advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section; or

(ii) The hearing would unreasonably delay completion of the rulemaking.

(4) *Explanation of denial.* If a petition is denied in whole or in part, the General Counsel shall include a detailed explanation of the factual basis for the denial, including findings on each of the relevant factors identified in paragraph (b)(2) or (3) of this section.

(5) *Hearing notice.* If the General Counsel grants the petition, the General Counsel shall publish notification



of the hearing in the FEDERAL REGISTER. The document shall specify the proposed rule at issue and the specific factual issues to be considered at the hearing. The scope of the hearing shall be limited to the factual issues specified in the notice.

(6) *Hearing process.* (i) A hearing under this section shall be conducted using procedures approved by the General Counsel, and interested parties shall have a reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.

(ii) The General Counsel shall arrange for a neutral officer to preside over the hearing and shall provide a reasonable opportunity to question the presenters.

(iii) After the hearing and after the record of the hearing is closed, the hearing officer shall place on the docket minutes of the hearing with sufficient detail as to fully reflect the evidence and arguments presented on the issues, along with proposed findings addressing the disputed issues of fact identified in the hearing notice.

(iv) Interested parties who participated in the hearing shall be given an opportunity to file statements of agreement or objection in response to the hearing officer's proposed findings. The complete record of the hearing shall be made part of the rulemaking record.

(7) *Actions following hearing.* (i) Following the completion of the hearing process, the General Counsel shall consider the record of the hearing, including the hearing officer's proposed findings, and shall make a reasoned determination whether to terminate the rulemaking; to proceed with the rulemaking as proposed; or to modify the proposed rule.

(ii) If the General Counsel decides to terminate the rulemaking, the General Counsel shall publish a document in the FEDERAL REGISTER announcing the decision and explaining the reasons for the decision.

(iii) If the General Counsel decides to finalize the proposed rule without material modifications, the General Counsel shall explain the reasons for the decision and its responses to the hearing

record in the preamble to the final rule.

(iv) If the General Counsel decides to modify the proposed rule in material respects, the General Counsel shall publish a new or supplemental notice of proposed rulemaking in the FEDERAL REGISTER explaining the General Counsel's responses to and analysis of the hearing record, setting forth the modifications to the proposed rule, and providing additional reasonable opportunity for public comment on the proposed modified rule.

(8) *Interagency review process.* The hearing procedures under this paragraph (b)(8) shall not impede or interfere with the interagency review process of the Office of Information and Regulatory Affairs for the proposed rulemaking.

(c) *Basis for rulemaking.* When issuing a proposed or final regulation declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), unless the regulation is specifically required by statute, the Department shall articulate the basis for concluding that the practice is unfair or deceptive to consumers as defined in § 399.79.

[Doc. No. DOT—OST—2019—0182, 85 FR 78716, Dec. 7, 2020]

EFFECTIVE DATE NOTE: At 85 FR 78716, Dec. 7, 2020, § 399.75 was added, effective Jan. 6, 2021.

## Subpart G—Policies Relating to Enforcement

### § 399.79 Policies relating to unfair and deceptive practices.

(a) *Applicability.* This policy shall apply to the Department's aviation consumer protection actions pursuant to 49 U.S.C. 41712(a).

(b) *Definitions.* (1) A practice is "unfair" to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

(2) A practice is "deceptive" to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is

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likely to have affected the consumer's conduct or decision with respect to a product or service.

(c) *Intent.* Proof of intent is not necessary to establish unfairness or deception for purposes of 49 U.S.C. 41712(a).

(d) *Specific regulations prevail.* Where an existing regulation applies to the practice of an air carrier, foreign air carrier, or ticket agent, the terms of that regulation apply rather than the general definitions set forth in this section.

(e) *Informal enforcement proceedings* (1) Informal enforcement proceedings will be conducted pursuant to the policies and procedures found in 49 CFR part 5, subpart D. Before any determination is made on how to resolve a matter involving a potential unfair or deceptive practice, the U.S. Department of Transportation's Office of Aviation Consumer Protection will provide an opportunity for the alleged violator to be heard and present relevant evidence, including but not limited to:

(i) In cases where a specific regulation applies, evidence tending to establish that the regulation at issue was not violated and, if applicable, that mitigating circumstances apply;

(ii) In cases where a specific regulation does not apply, evidence tending to establish that the conduct at issue was not unfair or deceptive as defined in paragraph (b) of this section; and

(iii) Evidence tending to establish that consumer harm was limited, or that the air carrier, foreign air carrier, or ticket agent has taken steps to mitigate consumer harm.

(2) During this informal process, if the Office of Aviation Consumer Protection reaches agreement with the alleged violator to resolve the matter with the issuance of an order declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), and when a regulation issued under the authority of section 41712 does not apply to the practice at issue, then the Department shall articulate in the order the basis for concluding that the practice is unfair or deceptive to consumers as defined in this section.

(f) *Formal enforcement proceedings.* When there are reasonable grounds to

believe that an airline or ticket agent has violated 49 U.S.C. 41712, and efforts to settle the matter have failed, the Office of Aviation Consumer Protection may issue a notice instituting an enforcement proceeding before an administrative law judge pursuant to 14 CFR 302.407. After the issues have been formulated, if the matter has not been resolved through pleadings or otherwise, the parties will receive reasonable written notice of the time and place of the hearing as set forth in 14 CFR 302.415.

[Doc. No. DOT—OST—2019—0182, 85 FR 78717, Dec. 7, 2020]

EFFECTIVE DATE NOTE: At 85 FR 78716, Dec. 7, 2020, § 399.79 was added, effective Jan. 6, 2021.

### § 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (n) of this section by a ticket agent of any size and the practice enumerated in paragraph (s) by a ticket agent that sells air transportation online and is not considered a small business under the Small Business Administration's size standards set forth in 13 CFR 121.201:

(a) Misrepresentations<sup>1</sup> which may induce members of the public to believe that the ticket agent is an air carrier.

(b) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the ticket agent, in advertisements, on or in places of business, or on aircraft in connection with the name of an air carrier with whom it does business, in such manner that it may mislead or confuse the traveling public with respect to the agency status of the ticket agent.

(c) Misrepresentations as to the quality or kind of service, type or size of

<sup>1</sup>The word "misrepresentation" used in this list includes any statement or representation made in advertising or made orally to members of the public which is false, fraudulent, deceptive or misleading, or which has the tendency or capacity to deceive or mislead.

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aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentation as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(e) Misrepresentations that passengers are directly insured when they are not so insured; for example, where the only insurance in force is that protecting the air carrier in event of liability.

(f) Misrepresentations as to fares and charges for air transportation or services in connection therewith.

(g) Misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specific in the lawful tariffs of the air carrier which is to perform the transportation.

(h) [Reserved]

(i) Misrepresentations that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

(j) Selling air transportation to persons on a reservation or charter basis for specified space, flight, or time, or representing that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with an air carrier for the furnishing of such definite reservation or charter as represented or sold.

(k) Selling or issuing tickets or other documents to passengers to be exchanged or used for air transportation knowing or having reason to know or believe that such tickets or other documents will not be or cannot be legally honored by air carriers for air transportation.

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable air-

craft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss of or damage to baggage or other property.

(n) Misrepresentation as to the requirements that must be met by persons or organizations in order to qualify for charter or group fare flights.

(o)-(r) [Reserved]

(s) Failing to disclose and offer Web-based discount fares on or after June 10, 2014, to prospective passengers who contact the agent through other channels (e.g., by telephone or in the agent's place of business) and indicate they are unable to use the agent's Web site due to a disability.

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended at 78 FR 67916, Nov. 12, 2013; Docket No. DOT-OST-2014-0056, 81 FR 76829, Nov. 3, 2016; Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

### § 399.81 Unrealistic or deceptive scheduling.

(a) The unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

(b) With respect to the advertising of schedule performance, it is an unfair or deceptive practice and an unfair method of competition to use any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of system-wide operations thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

(c) *Chronically delayed flights.* (1) This paragraph (c) applies to any air carrier that is a "reporting carrier" as defined in Part 234 of Department regulations (14 CFR Part 234).

(2) For the purposes of this paragraph (c), a chronically delayed flight means any domestic flight that is operated at least 10 times a month, and arrives more than 30 minutes late (including

cancelled flights) more than 50 percent of the time during that month.

(3) For purposes of this paragraph (c), the Department considers all of a carrier's flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time to be one single flight.

(4) The holding out of a chronically delayed flight for more than four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2007-0022, 74 FR 69003, Dec. 30, 2009; Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

**§ 399.82 Passing off of carrier identity by affiliation between carriers.**

(a) *Applicability.* This policy shall apply to proceedings in which the Department, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Department in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Department action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Department will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Department may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) *Definition.* For the purpose of this statement, the term *affiliation*, as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of

the following relationships to the other:

(1) Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;

(2) Is jointly controlled with the other carrier, directly or indirectly by a third person; or

(3) Provides general agency services for the other carrier.

For the purpose of this statement, *general agency services* shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity, local sales offices; passenger services; local government representation; purchase, lease or other acquisition of equipment; or aircraft and transit services, aircraft inspection, aircraft dispatch.

(c) *Minimum safeguards.* The minimum safeguards which the Department will consider as adequate to foreclose passing off by affiliated carriers are as follows:

(1) An air carrier and any affiliated foreign air carrier shall not engage in joint public relations activities at points served by both carriers which tend to pass off the services of one carrier as the services of the other carrier or as part of a unified system of which each is a part;

(2) Where one affiliated carrier provides general agency services for the other carrier, at points served by both carriers, it shall specifically identify all flights of the other carrier as flights of that carrier without reference to any relationship to the carrier performing the agency services;

(3) All forms of display (including aircraft insignia), scheduled publications, advertising, or printed matter employed by affiliated carriers shall not state or imply that the services of either carrier are performed in common with the other carrier or as part of a single system. In cases where it is necessary to indicate that any agency service is performed by one affiliated

carrier for the other, the references to the carrier performing the agency should be sufficiently subordinated to the name of the other carrier as to emphasize the limited role of the agent;

(4) Telephone facilities at points served by both carriers should preserve the identity of the individual carriers;

(5) Where joint traffic or sales facilities are maintained by affiliated carriers, the separate identity of each carrier should be maintained by reasonably comparable use of display advertising, desk-space, personnel uniforms, and other facilities and activities;

(6) Where one carrier sells time payment tickets for travel over the other carrier (except interline travel), the application form should identify the carrier performing the transportation;

(7) The respective personnel of the affiliated carriers shall preserve the individual identity of the respective carriers in all public dealings.

(d) *Unfair and deceptive practice.* It is the policy of the Department to regard any joint activity of an affiliated air carrier and a foreign air carrier as an unfair or deceptive practice or unfair method of competition where such joint activity does not satisfy the minimum safeguards enumerated in the preceding subsection.

(e) *Exceptions.* Exceptions to a safeguard set forth in paragraph (c) of this section may be recognized for activities in a foreign country if the Department finds that special circumstances pertaining to the country render the safeguard inappropriate. Exceptions on other grounds may be recognized pursuant to § 399.4.

[PS-29, 30 FR 13781, Oct. 29, 1965, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15947, Apr. 16, 2019]

**§ 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.**

It is the policy of the Department to consider the practice of an air carrier, foreign air carrier, or ticket agent, of stating to a prospective passenger by telephone or other means of communication that a reservation of space on a scheduled flight in air transportation is confirmed before a passenger has re-

ceived a ticket specifying thereon his confirmed reserved space, to be an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of 49 U.S.C. 41712, unless the tariff of the particular air carrier or foreign air carrier provides for confirmation of reserved space by the means so used.

[PS-58, 39 FR 38096, Oct. 29, 1974, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15948, Apr. 16, 2019]

**§ 399.84 Price advertising and opt-out provisions.**

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.*, a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Although charges included within the single total price listed (*e.g.*, government taxes) may be stated separately or through links or “pop ups” on websites that display the total price, such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(b) The Department considers any advertising by the entities listed in paragraph (a) of this section of an each-way airfare that is available only when purchased for round-trip travel to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless such airfare is advertised as “each way” and in such a manner so that the disclosure of the round-trip purchase requirement is clearly and conspicuously noted in the advertisement and is stated prominently and proximately to the each-

way fare amount. The Department considers it to be an unfair and deceptive practice to advertise each-way fares contingent on a round-trip purchase requirement as “one-way” fares, even if accompanied by prominent and proximate disclosure of the round trip purchase requirement.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation, a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, may not offer additional optional services in connection with air transportation, a tour, or tour component whereby the optional service is automatically added to the consumer’s purchase if the consumer takes no other action, *i.e.*, if the consumer does not opt out. The consumer must affirmatively “opt in” (*i.e.*, agree) to such a service and the fee for it before that fee is added to the total price for the air transportation-related purchase. The Department considers the use of “opt-out” provisions to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

[76 FR 23166, Apr. 25, 2011]

**§ 399.85 Notice of baggage fees and other fees.**

(a) If a U. S. or foreign air carrier has a website accessible for ticket purchases by the general public in the U.S., the carrier must promptly and prominently disclose any increase in its fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (e.g., provide a link that says “changed bag rules” or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another webpage that details the change in baggage allowance or fees and the effective dates of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) If a U.S. carrier, a foreign air carrier, an agent of either, or a ticket

agent has a website accessible for ticket purchases by the general public in the U.S., the carrier or agent must clearly and prominently disclose on the first screen in which the agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can see these baggage fees. An agent may refer consumers to the airline websites where specific baggage fee information may be obtained or to its own site if it displays airlines’ baggage fees.

(c) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase email confirmation, a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or sells air transportation in the United States must include information regarding the passenger’s free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag. Carriers must provide this information in text form in the e-ticket confirmation. Agents may provide this information in text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed. The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(d) If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website information on fees for all optional services that are available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier’s homepage directly to a page or a place on a page where all such optional services and related fees are disclosed. For purposes of this section, the term “optional services” is defined as any service the airline provides, for a fee, beyond passenger air transportation.

Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(e) For air transportation within, to or from the United States, a carrier marketing a flight under its identity that is operated by a different carrier, otherwise known as a code-share flight, must through its website disclose to consumers booked on a code-share flight any differences between its optional services and related fees and those of the carrier operating the flight. This disclosure may be made through a conspicuous notice of the existence of such differences on the marketing carrier's website or a conspicuous hyperlink taking the reader directly to the operating carrier's fee listing or to a page on the marketing carrier's website that lists the differences in policies among code-share partners.

(f) The Department considers the failure to give the appropriate notice described in paragraphs (a) through (e) of this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2010-0140, 76 FR 23166, Apr. 25, 2011]

**§ 399.86 Payments for non-air transportation services for air cargo.**

The Department considers that payments by air carriers and foreign air carriers to shippers, indirect air carriers, or foreign indirect air carriers for non-air transportation preparation of air cargo shipments are for services ancillary to the air transportation, and are not prohibited under section 403 of the Act.

[PS-86, 44 FR 45609, Aug. 3, 1979]

**§ 399.87 Baggage allowances and fees.**

For passengers whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must

apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary. In the case of code-share flights that form part of an itinerary whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees of the marketing carrier throughout the itinerary to the extent that they differ from those of any operating carrier.

[Doc. No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

**§ 399.88 Prohibition on post-purchase price increase.**

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation within, to or from the United States, or of a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

(b) A seller of scheduled air transportation within, to or from the United States or a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a post-purchase price increase due to an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to purchase of the scheduled air transportation, tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice

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and without obtaining his or her written consent of the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

### **§ 399.89 Disclosure of potential for price increase before payment.**

Any seller of scheduled air transportation within, to or from the United States, or of a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a price increase that could take place prior to the time that the full amount agreed upon has been paid by the consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, an increase in an applicable fuel surcharge, or an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to accepting any payment for the scheduled air transportation, or tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and obtaining his or her written consent to the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

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### **Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers**

#### **§ 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.**

This policy shall apply to proceedings under 49 U.S.C. 41309 in which the Department is required to make any determination as to the public interest or consistency with 49 U.S.C. Subtitle VII of any agreement or relationship sought to be entered into by an air carrier, or officer or director thereof, with a foreign airline in connection with the performance of some activity pursuant to a technical assistance contract financed by an agency of the U.S. Government.

[Doc. No. DOT-OST-2014-0140, 84 FR 15948, Apr. 16, 2019]

### **Subparts I–J [Reserved]**

### **Subpart K—Policies Relating to Certificate Duration**

#### **§ 399.120 Duration of certificates in limited-entry markets.**

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years' duration pursuant to 49 U.S.C. 41102 and 41110. This provision does not alter or amend permanent certificates issued prior to January 1, 1985.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986, as amended by Doc. No. DOT-OST-2014-0140, 84 FR 15948, Apr. 16, 2019]